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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,082	05/31/2006	Takashi Kaneko	KAS-5328	9462

7590 05/08/2009
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EXAMINER

HAMMER, KATIE L

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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05/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,082	Applicant(s) KANEKO, TAKASHI	
	Examiner KATIE HAMMER	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5 and 6 is/are rejected.
- 7) ☒ Claim(s) 3, 4 and 8-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/31/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-6 and 8-10 are pending in this application.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed May 31, 2006 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

Claim 3 is objected to because of the following informalities: It is unclear to the Examiner what is meant by "decocting" the natural material. If this is a typo, please fix or otherwise clearly define the method step. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2 and 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "natural material" in lines 6, 9, 15, 17, 18, 19, 22, and 23 of the claim. There is insufficient antecedent basis for this limitation in the claim, as there is only a mention of "cell molecules of animals and plants" earlier in the claim, but no definition of that as the "natural material". Claim 1 also uses the phrase "capable of" in line 5 of claim 1, which is indefinite. The Examiner suggests that the phrase be changed to "for" or change "capable of adjusting the temperature" to the phrase "to adjust the temperature".

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. "All kinds of substances existing in the natural world" is indefinite for claim language and a clear definition of the claims needs to be provided.

Claims 5-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it uses the phrase "by performing" to recite the process steps. It is therefore unclear to the Examiner what is being claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miyamatsu et al. (US 5,221,289).

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Miyamatsu et al. (US '289) teaches a dyed textile article in the same color as that of the natural material, as claimed in claim 5, (textile article dyed with an extract of the mycelium or basidiocarp of reishi, see col. 6, lines 14-48).

Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324.

Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko (US 2002/0166183 A1).

Kaneko (US '183) teaches a dye, as claimed in claim 6, (for use in a fiber dyeing method where the dye is extracted from the fine powder of the peels of the citrus fruits with a powder having passed a sieve of 140 to 50 mesh, see para. 0013).

Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324.

Allowable Subject Matter

Claims 1 and 2 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 3-4 and 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of record: Miyamatsu et al. (US 5,221,289), Kaneko (US 2002/0166183 A1), and Agarwal (EP 0754734 A1) do not teach or disclose all of the details of the textile dyeing method as taught by instant claim 1. Agarwal teaches a process for producing dyestuffs comprising extracting a dye from plant material by soaking, cleaning, and pulverizing the plant in an aqueous solution then heating it, filtering the solution, and concentrating the filtrate to obtain the dye (see page 1, lines 37-54). Miyamatsu et al., Kaneko, and Agarwal do not teach or suggest the use of far infrared rays in a drying machine to dry and activate the natural material, nor do they teach electrically charging the textile so that the dye attaches to the textile by ion absorption. Therefore, after the rejections of claims 1 and 2 under 35 U.S.C. 112, second paragraph, are overcome, the claims are found to be allowable over the prior art of record.

Conclusion

The references listed on form PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATIE HAMMER whose telephone number is (571)270-7342. The examiner can normally be reached on Monday to Friday, 10:00am EST to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/
Supervisory Patent Examiner, Art
Unit 1796

/KLH/

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